

State of Wisconsin



2009 Senate Bill 299

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2009 WISCONSIN ACT 78

AN ACT *to renumber* 48.981 (9); *to amend* 48.981 (9) (title) and 48.981 (9) (b) 1.; *to repeal and recreate* 48.981 (7) (cr); and *to create* 48.981 (9) (a) (title) and 48.981 (9) (b) of the statutes; **relating to:** public disclosure of certain information when child abuse or neglect results in death or serious injury or involves aggravated circumstances or when a child in an out-of-home placement commits suicide or is sexually abused by a caregiver.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 48.981 (7) (cr) of the statutes is repealed and recreated to read:

48.981 (7) (cr) 1. In this paragraph:

a. "Incident of death or serious injury" means an incident in which a child has died or been placed in serious or critical condition, as determined by a physician, as a result of any suspected abuse or neglect that has been reported under this section or in which a child who has been placed outside the home by a court order under this chapter or ch. 938 is suspected to have committed suicide.

b. "Incident of egregious abuse or neglect" means an incident of suspected abuse or neglect that has been reported under this section, other than an incident of death or serious injury, involving significant violence, torture, multiple victims, the use of inappropriate or cruel restraints, exposure of a child to a dangerous situation, or other similar, aggravated circumstances.

2. Notwithstanding par. (a), if an agency that receives a report under sub. (3) has reason to suspect that an incident of death or serious injury or an incident of egregious abuse or neglect has occurred, within 2 working days after determining that such an incident is suspected to

have occurred the agency shall provide all of the following information to the subunit of the department responsible for statewide oversight of child abuse and neglect programs:

a. The name of the agency and the name of a contact person at the agency.

b. Information about the child, including the age of the child.

c. The date of the incident and the suspected cause of the death, serious injury, or egregious abuse or neglect of the child.

d. A brief history of any reports under sub. (3) received in which the child, a member of the child's family, or the person suspected of the abuse or neglect was the subject and of any services under this chapter offered or provided to any of those persons.

e. A statement of whether the child was residing in his or her home or was placed outside the home when the incident occurred.

f. The identity of any law enforcement agency that referred the report of the incident and of any law enforcement agency, district attorney, or other officer or agency to which the report of the incident was referred.

3. a. Within 2 working days after receiving the information provided under subd. 2., the subunit of the department that received the information shall disclose to the

* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

public the fact that the subunit has received the information; whether the department is conducting a review of the incident and, if so, the scope of the review and the identities of any other agencies with which the department is cooperating at that point in conducting the review; whether the child was residing in the home or was placed in an out-of-home placement at the time of the incident; and information about the child, including the age of the child. If the information received is about an incident of egregious abuse or neglect, the subunit of the department shall make the same disclosure to a citizen review panel, as described in par. (a) 15g., and, in a county having a population of 500,000 or more, to the Milwaukee child welfare partnership council.

b. Within 90 days after receiving the information provided under subd. 2., the subunit of the department that received the information shall prepare, transmit to the governor and to the appropriate standing committees of the legislature under s. 13.172 (3), and make available to the public a summary report that contains the information specified in subd. 4. or 5., whichever is applicable. That subunit may also include in the summary report a summary of any actions taken by the agency in response to the incident and of any changes in policies or practices that have been made to address any issues raised in the review and recommendations for any further changes in policies, practices, rules, or statutes that may be needed to address those issues. If the subunit does not include those actions or changes and recommended changes in the summary report, the subunit shall prepare, transmit to the governor and to the appropriate standing committees of the legislature under s. 13.172 (3), and make available to the public a report of those actions or changes and recommended changes within 6 months after receiving the information provided under subd. 2. Those committees shall review all summary reports and reports of changes and recommended changes transmitted under this subd. 3. b., conduct public hearings on those reports no less often than annually, and submit recommendations to the department regarding those reports.

c. Subdivision 3. a. and b. does not preclude the subunit of the department that prepares the summary report from releasing to the governor, to the appropriate standing committees of the legislature under s. 13.172 (3), or to the public any of the information specified in subd. 4. or 5. before the summary report is transmitted to the governor and to those committees and made available to the public; adding to or amending a summary report if new information specified in subd. 4. or 5. is received after the summary report is transmitted to the governor and to those committees and made available to the public; or releasing to the governor, to those committees, and to the public any information at any time to correct any inaccurate information reported in the news media.

4. If the child was residing in his or her home when the incident of death or serious injury or the incident of

egregious abuse or neglect occurred, the summary report under subd. 3. shall contain all of the following:

a. Information about the child, including the age, gender, and race or ethnicity of the child, a description of the child's family, and, if relevant to the incident, a description of any special needs of the child.

b. A statement of whether any services under this chapter or ch. 938 were being provided to the child, any member of the child's family, or the person suspected of the abuse or neglect, or whether any of those persons was the subject of a report being investigated under sub. (3) or of a referral to the agency for services, at the time of the incident and, if so, the date of the last contact between the agency providing those services and the person receiving those services.

c. A summary of all involvement of the child's parents and of the person suspected of the abuse or neglect in any incident reported under sub. (3) or in receiving services under this chapter or ch. 938 in the 5 years preceding the date of the incident.

d. A summary of any actions taken by the agency with respect to the child, any member of the child's family, and the person suspected of the abuse or neglect, including any investigation by the agency under sub. (3) of a report in which any of those persons was the subject and any referrals by the agency of any of those persons for services.

e. The date of the incident and the suspected cause of the death, serious injury, or egregious abuse or neglect of the child, as reported by the agency under subd. 2. c.

f. The findings on which the agency bases its reasonable suspicion that an incident of death or serious injury or an incident of egregious abuse or neglect has occurred, including any material circumstances leading to the death, serious injury, or egregious abuse or neglect of the child.

g. A summary of any investigation that has been conducted under sub. (3) of a report in which the child, any member of the child's family, or the person suspected of the abuse or neglect was the subject and of any services that have been provided to the child and the child's family since the date of the incident.

5. If the child was placed in an out-of-home placement under this chapter or ch. 938 at the time of the incident of death or serious injury or incident of egregious abuse or neglect, the summary report under subd. 3. shall contain all of the following:

a. Information about the child, including the age, gender, and race or ethnicity of the child and, if relevant to the incident, a description of any special needs of the child.

b. A description of the out-of-home placement, including the basis for the decision to place the child in that placement.

c. A description of all other persons residing in the out-of-home placement.

d. The licensing history of the out-of-home placement, including the type of license held by the operator of the placement, the period for which the placement has been licensed, and a summary of all violations by the licensee of any provisions of licensure under s. 48.70 (1) or rules promulgated by the department under s. 48.67 and of any other actions by the licensee or an employee of the licensee that constitute a substantial failure to protect and promote the health, safety, and welfare of a child.

e. The date of the incident and the suspected cause of the death, serious injury, or egregious abuse or neglect of the child, as reported by the agency under subd. 2. c.

f. The findings on which the agency bases its reasonable suspicion that an incident of death or serious injury or an incident of egregious abuse or neglect has occurred, including any material circumstances leading to the death, serious injury, or egregious abuse or neglect of the child.

6. A summary report or other release or disclosure of information under subd. 3. may not include any of the following:

a. Any information that would reveal the identity of the child who is the subject of the summary report, any member of the child's family, any member of the child's household who is a child, or any caregiver of the child.

b. Any information that would reveal the identity of the person suspected of the abuse or neglect or any employee of any agency that provided services under this chapter to the child or that participated in the investigation of the incident of death or serious injury or the incident of egregious abuse or neglect.

c. Any information that would reveal the identity of a reporter or of any other person who provides information relating to the incident of death or serious injury or the incident of egregious abuse or neglect.

d. Any information the disclosure of which would not be in the best interests of the child who is the subject of the summary report, any member of the child's family, any member of the child's household who is a child, or any caregiver of the child, as determined by the subunit of the department that received the information, after consultation with the agency that reported the incident of death or serious injury or the incident of egregious abuse or neglect, the district attorney of the county in which the incident occurred, or the court of that county, and after balancing the interest of the child, family or household member, or caregiver in avoiding the stigma that might result from disclosure against the interest of the public in obtaining that information.

e. Any information the disclosure of which is not authorized by state law or rule or federal law or regulation.

7. The subunit of the department that prepares a summary report or otherwise transmits, releases, or discloses information under subd. 3. may not transmit the summary report to the governor and to the appropriate standing

committees of the legislature under s. 13.172 (3), make the summary report available to the public, or transmit, release, or disclose the information to the governor, to those standing committees, or to the public if the subunit determines that transmitting or making the summary report available or transmitting, releasing, or disclosing the information would jeopardize any of the following:

a. Any ongoing or future criminal investigation or prosecution or a defendant's right to a fair trial.

b. Any ongoing or future civil investigation or proceeding or the fairness of such a proceeding.

8. If the department fails to disclose to the governor, to the appropriate standing committees of the legislature under s. 13.172 (3), or to the public any information that the department is required to disclose under this paragraph, any person may request the department to disclose that information. If the person's request is denied, the person may petition the court to order the disclosure of that information. On receiving a petition under this subdivision, the court shall notify the department, the agency, the district attorney, the child, and the child's parent, guardian, or legal custodian of the petition. If any person notified objects to the disclosure, the court may hold a hearing to take evidence and hear argument relating to the disclosure of the information. The court shall make an in camera inspection of the information sought to be disclosed and shall order disclosure of the information, unless the court finds that any of the circumstances specified in subd. 6. or 7. apply.

9. Any person acting in good faith in providing information under subd. 2., in preparing, transmitting, or making available a summary report under subd. 3., or in otherwise transmitting, releasing, or disclosing information under subd. 3. is immune from any liability, civil or criminal, that may result by reason of those actions. For purposes of any proceeding, civil or criminal, the good faith of a person in providing information under subd. 2., in preparing, transmitting, or making available a summary report under subd. 3., or in otherwise transmitting, releasing, or disclosing information under subd. 3. shall be presumed.

SECTION 2. 48.981 (9) (title) of the statutes is amended to read:

48.981 (9) (title) ANNUAL AND QUARTERLY REPORTS.

SECTION 3. 48.981 (9) of the statutes is renumbered 48.981 (9) (a).

SECTION 4. 48.981 (9) (a) (title) of the statutes is created to read:

48.981 (9) (a) (title) *Annual reports.*

SECTION 5d. 48.981 (9) (b) of the statutes is created to read:

48.981 (9) (b) *Quarterly reports.* 1. Within 30 days after the end of each calendar quarter, the department shall prepare and transmit to the governor, and to the appropriate standing committees of the legislature under s. 13.172 (3), a summary report of all reports received by

the department under sub. (3) (c) 8. during the previous calendar quarter of abuse, as defined in s. 48.02 (1) (b) to (f), of a child who is placed in the home of a foster parent, treatment foster parent, or relative other than a parent or in a group home, shelter care facility, or residential care center for children and youth. For each report included in the summary report the department shall provide the number of incidents of abuse reported; the dates of those incidents; the county in which those incidents occurred; the age or age group of the child who is the subject of the report; the type of placement in which the child was placed at the time of the incident; whether it was determined under sub. (3) (c) 4. that abuse occurred; and, if so, the nature of the relationship between the child and the person who abused the child, but may not provide any of the information specified in sub. (7) (cr) 6. or any information that would jeopardize an investigation, prosecution, or proceeding described in sub. (7) (cr) 7. a. or b.

2. In every 4th summary report prepared and transmitted under subd. 1., the department shall provide for all reports of abuse, as defined in s. 48.02 (1) (b) to (f), of a child who is placed as described in subd. 1. received by the department under sub. (3) (c) 8. during the previous year information indicating whether the abuse resulted in any injury, disease, or pregnancy that is known to be directly caused by the abuse, but may not provide any of the information specified in sub. (7) (cr) 6. or any information that would jeopardize an investigation, prosecution, or proceeding described in sub. (7) (cr) 7. a. or b. A county department reporting under sub. (3) (c) 8. shall make an active effort to obtain that information and report the information to the department under sub. (3) (c) 8.

3. The appropriate standing committees of the legislature shall review all summary reports transmitted under subd. 1., conduct public hearings on those summary reports no less often than annually, and submit recommendations to the department regarding those summary reports. The department shall also make those summary reports available to the public.

SECTION 6d. 48.981 (9) (b) 1. of the statutes, as

created by 2009 Wisconsin Act (this act), is amended to read:

48.981 (9) (b) 1. Within 30 days after the end of each calendar quarter, the department shall prepare and transmit to the governor, and to the appropriate standing committees of the legislature under s. 13.172 (3), a summary report of all reports received by the department under sub. (3) (c) 8. during the previous calendar quarter of abuse, as defined in s. 48.02 (1) (b) to (f), of a child who is placed in the home of a foster parent, ~~treatment foster parent~~, or relative other than a parent or in a group home, shelter care facility, or residential care center for children and youth. For each report included in the summary report the department shall provide the number of incidents of abuse reported; the dates of those incidents; the county in which those incidents occurred; the age or age group of the child who is the subject of the report; the type of placement in which the child was placed at the time of the incident; whether it was determined under sub. (3) (c) 4. that abuse occurred; and, if so, the nature of the relationship between the child and the person who abused the child, but may not provide any of the information specified in sub. (7) (cr) 6. or any information that would jeopardize an investigation, prosecution, or proceeding described in sub. (7) (cr) 7. a. or b.

SECTION 7. Initial applicability.

(1) INCIDENT REPORTING. This act first applies to an incident of death or serious injury, as defined in section 48.981 (7) (cr) 1. a. of the statutes, or an incident of egregious abuse or neglect, as defined in section 48.981 (7) (cr) 1. b. of the statutes, that occurs on the effective date of this subsection.

SECTION 8. Effective dates. This act takes effect on the first day of the 3rd month beginning after publication, except as follows:

(1) TREATMENT FOSTER HOMES. The amendment of section 48.981 (9) (b) 1. of the statutes takes effect on the date stated in the notice provided by the secretary of children and families and published in the Wisconsin Administrative Register under section 48.62 (9) of the statutes, or on the first day of the 3rd month beginning after publication, whichever is later.